Supreme Court, U.S.
FILED
JAN 28 1994
OFFICE OF THE CLERK

(2)

No. 93-1072

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1993

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DAVID CHARLES DELONG, *et al.*,
*Petitioners,*
v.
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

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## BRIEF IN OPPOSITION

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

12 pp

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## BRIEF IN OPPOSITION

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### STATEMENT OF THE CASE

In early 1982, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") and International Harvester Corporation (now called "Navistar") reached tentative agreement on a new national collective bargaining agreement. In order to address the rapid contraction of Navistar's workforce and the closing of several of Navistar's manufacturing facilities, that tentative agreement created a "Master Recall List." Employees on that list who were permanently laid-off as a result of a plant closing were allowed to transfer, with full seniority rights, into other Navistar facilities. The Master Recall List was reflected

in a document entitled "Supplemental Letters of Understanding."

The tentative agreement was presented to the elected leadership of the 24 UAW Local Unions representing Navistar employees at facilities scattered across the United States. At that meeting, the terms of the new contract—including the Supplemental Letters of Understanding—were explained in detail. The elected local union leaders approved the tentative agreement. The agreement was thereafter presented to the membership for ratification and was ratified by a vote of 7,086 to 3,949. At Local 402, which represents the employees in Springfield, Ohio, the vote was 948 in favor and 842 opposed.

Nearly two years later, eight UAW-represented Navistar employees from the Springfield facilities (hereafter "Plaintiffs" or "Petitioners") filed the present suit charging the UAW with, *inter alia,* failure to provide them and their fellow employees in Springfield with adequate information prior to the vote on the new national agreement. That failure, it was alleged, violated Title I of the Landrum-Griffin Act which provides, in relevant part, that union members must be provided with "equal rights and privileges . . . to vote in elections or referendums of the labor organization." 29 U.S.C. § 411(a)(1).

Following lengthy pre-trial proceedings and the disposal of several other issues raised in the Complaint, the case was tried before a jury. The district court presented six special interrogatories to the jury, three of which involved the allegation that the UAW provided inadequate information prior to the vote in 1982. The first two of those interrogatories requested the jury to decide whether the defendants had denied Plaintiffs "the right to cast meaningful votes." The third interrogatory asked the jury whether Plaintiffs had "proven by the preponderance or greater weight of the evidence that the Supplemental Letters of Understanding would not have been adopted na-

tionally if [union members in Springfield] had not been denied their right to cast meaningful votes." (App. A-14) The jury instructions on this issue stated that Plaintiffs were required to prove that "if the [union members in Springfield] had not been denied the right to vote, the Supplemental Letters of Understanding would not have been ratified nationally." (App. A-11) In other words, the jury was instructed that the Plaintiffs were required to show that the harm they allegedly suffered (adoption of the Master Recall List) was caused by the union's allegedly illegal conduct.

Plaintiffs were provided a full opportunity to participate in the crafting of the jury instructions. In fact, in response to a direct question from the trial court regarding whether Plaintiffs had "[a]ny problem with the interrogatories," Plaintiffs' counsel responded that he "didn't see any problems with them." (App. A-14-15) Plaintiffs did *not* object to these jury instructions or to the special interrogatories.

The jury answered the third interrogatory in the *negative,* determining that the Plaintiffs had failed to prove the necessary causal relationship between any inadequacy in the pre-vote information and the otucome of the vote. In other words, the jury found that any improprieties in the conduct of the election had been "harmless" and had not affected the outcome of the national ratification vote.

After the District Court entered judgment for the UAW based on the jury's responses to the interrogatories, Plaintiffs appealed to the Sixth Circuit. The Sixth Circuit affirmed on the ground that Plaintiffs had not objected to the jury instructions and, under Fed. R. Civ. Pro. 51, were therefore precluded from basing an appeal on any alleged error of law in those instructions.

## REASONS FOR DENYING THE WRIT

The Sixth Circuit decided a single issue: that Fed. R. Civ. Pro. 51 prohibits Plaintiffs from raising a legal challenge to a jury instruction to which Plaintiffs had *not* objected during the trial. Since Plaintiffs had failed to preserve the Landrum-Griffin Act Title I causation issue by objecting to the jury instructions on that issue, the Sixth Circuit "declin[ed] to address" the Plaintiffs' claim that the jury instructions and interrogatories incorrectly characterized the causal link that Plaintiffs were required to establish. (App. A-17).

Petitioners ignore the holding of the Sixth Circuit and attempt to present this Court with the very causation issue that the Sixth Circuit "declin[ed] to address." As we now show, the Sixth Circuit correctly applied Fed. R. Civ. Pro. 51 to the facts of this case and its decision on that mundane procedural question raises no issue worthy of this Court's attention. It is equally plain that there is no reason for this Court to review a Landrum-Griffin Act issue which Plaintiffs failed to properly raise in the district court and which the Court of Appeals found not to be properly presented.

1. The Sixth Circuit was plainly correct in holding that Plaintiffs' failure to object to the jury instructions on causation during trial forecloses raising that issue on appeal. Fed. R. Civ. Pro. 51 provides, *inter alia,* that "[n]o party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection."

The Sixth Circuit's holding in this case was thus nothing more than an entirely straightforward exercise in the application of Fed. R. Civ. Pro. 51. Applying the plain language of that Rule, the Sixth Circuit found that Plaintiffs were barred from raising on appeal an alleged defect in a jury instruction to which they had not objected during the trial.

2. Fed. R. Civ. Pro. 51 is subject to a narrow exception; failure to raise an objection will be overlooked when doing so is necessary to avoid "plain error." *City of Newport v. Fact Concerts,* 453 U.S. 247, 256 (1981). If Plaintiffs' lengthy argument on the merits of the Landrum-Griffin Act Title I causation issue is construed as an argument that the Sixth Circuit erred by failing to apply this "plain error" exception to the general rule prescribed by Fed. R. Civ. Pro. 51, that argument fails.

The court below briefly addressed the "plain error" exception to Rule 51 and correctly concluded that the district court's causation determination did not constitute "plain error." In fact, the court below was unable to find "any authority clearly supporting" Plaintiffs' argument on the causation issue (App. A-15) and was therefore "hard-pressed to conclude that the district court had committed any error, let alone that such error was 'plain' or 'obvious'." (App. A-17).

A. The Sixth Circuit's reading of applicable law on the merits of the causation issue was entirely correct.

Our research has not revealed any appellate court decisions addressing the causation issue in the context of Title I challenges to union ratification votes.

There are, however, several cases addressing that issue in the context of challenges to ratification votes based on claims that alleged union misrepresentations during the ratification process violated the duty of fair representation.[1] Each of those cases holds that plaintiffs are re-

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[1] Under the duty of fair representation, a union is required to avoid conduct which is "arbitrary, discriminatory or in bad faith." *Vaca v. Sipes,* 386 U.S. 171, 190 (1967). The duty of fair representation applies to contract negotiation as well as administration. *Air Line Pilots v. O'Neill,* —— U.S. ——, 111 S.Ct. 1127 (1991). Misrepresentations during contract ratification procedures have been universally held to violate a union's duty of fair representation. *Anderson v. United Paperworkers,* 641 F.2d 574, 576-78 (8th Cir. 1981); *Deboles v. Trans World Airlines,* 552 F.2d 1005, 1018 (3rd Cir.), cert. denied 434 U.S. 837.

quired to establish the same kind of causal link between the alleged misrepresentation and the outcome of the ratification process as the district court required here.

In *Deboles v. Trans World Airlines*, 552 F.2d 1005, 1019-20 (3d Cir. 1977), for example, the Third Circuit applied traditional notions of proximate causation to conclude that "[t]here is no liability . . . where false statements by union officials . . . did not materially affect the result of the subsequent ratification vote." The court therefore refused to order any remedy where the misrepresentations had been determined not to have caused the ratification results. See also, *Acri v. Machinists*, 781 F.2d 1393, 1397 (9th Cir. 1986) ("[P]laintiffs must establish a causal relationship between the alleged misrepresentation and their injury.") *Ackley v. Teamsters*, 959 F.2d 1463, 1472 (9th Cir. 1992) ("[T]o prevail in a misrepresentation case—and thus in a non-disclosure case—plaintiff must demonstrate a 'causal relationship between the alleged misrepresentations and their inquiry' " [quoting *Acri, supra*]. In other words, plaintiffs must show that "absent the misrepresentation, the outcome of the ratification vote would have been different." *Id.*)

In the present case, the jury concluded that Plaintiffs had failed to demonstrate that the alleged misrepresentations had caused the adoption of the Master Recall List. The district court therefore concluded that Plaintiffs had failed to establish the necessary causal link between the alleged misrepresentation and the harm they claim was visited upon them. As the Sixth Circuit found, the district court's decision is thus entirely consistent with existing caselaw regarding challenges to the conduct of ratification votes.

B. Petitioners' invocation of the authority of *Wirtz v. Hotel, Motel and Club Employees Union*, 391 U.S. 492 (1968) is misplaced. *Wirtz* involved a claim that an election of an union officer was fatally flawed because of a union rule limiting the potential candidates for office to

those who had held other elected positions. *Wirtz* is different from the present case for two separate dispositive reasons.

First, *Wirtz* dealt with an entirely different regulatory scheme. Title IV of the Landrum-Griffin Act, at issue in *Wirtz*, regulates elections for union office in detail.[2] Moreover, Title IV specifies the circumstances under which re-run elections may be ordered: an election may be ordered re-run if, *inter alia*, a federal district court determines that the conduct of the election violated Section 481 and "that the violation of Section 481 . . . may have affected the outcome of [the] election." 29 U.S.C. § 482(c).

Title I, on the other hand, which is the sole statutory provision at issue here, specifies only that all union members must be accorded "equal rights and privileges . . . to vote in elections or referendums of the labor organization." 29 U.S.C. § 411(a)(1). Ratification votes on proposed contracts are not mandated by Title I, must less are the specifics of such votes governed by statutory law.

Thus, in the context of Title IV's mandated and heavily regulated elections for union officers, the *Wirtz* Court determined that—since all the ballots issued in the election reflected the impermissible narrow candidacy qualifications—those candidacy qualifications "may have affected" the outcome of the election.

In the context of Title I challenges to ratification votes, in contrast, Congress chose not to incorporate the "may have affected" standard of proof. It is therefore entirely appropriate to apply the more traditional notions of proximate causation followed in the closely related duty of fair representation jurisprudence described above.

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[2] That statute requires periodic secret ballot election of various officers of both national and local unions, mandates the availability of mailing lists to all "bona fide candidates," requires election observers, and regulates many other aspects of elections for union leadership position. 29 U.S.C. § 481(a)-(g).

Second, there is an important distinction between the type of election impropriety at issue in *Wirtz* and that at issue here. In *Wirtz*, the impropriety involved an inability of candidates to run for office. In the present case, in contrast, the alleged impropriety involves an isolated failure to provide adequate information to a defined subgroup of voters.

In *Wirtz*, there was no way to show that the "taint" resulting from the impermissible restriction was confined to a particular number of votes or potential voters. The flaw necessarily infected every ballot because every ballot reflected the truncated list of candidates. In the present case, in contrast, the "taint" involves allegations that inadequate information was provided to the members of only one Local Union, out of a total of 24 Local Unions.

In the present case, therefore, it is in fact very likely that the "taint" is limited to those voters who voted in Springfield and that the voters at other locations were not affected by the alleged improprieties which occurred in Springfield. If, in fact, that is what happened, there is no reason to overturn the results of the national vote which the Springfield votes were mathematically incapable of altering. And if that is not what happened, Plaintiffs were entitled to prove the facts showing a broader effect to the jury. Such an exercise in containment is impossible in the *Wirtz* setting but is entirely appropriate in the present context. For precisely that reason, the causation rule followed here is sound; it is certainly not "plain error."

In sum, Plaintiffs' argument that the trial court erred in failing to expand the *Wirtz* reasoning to cover cases in which the election improprieties affected only a sub-group of voters comes far too late and the Court of Appeals was correct in determining that the jury instructions—to which Plaintiffs failed to object—did not constitute "plain error."

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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